

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. H-10/08-492
)
 Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Health Access Eligibility Unit (HAEU) denying her application for Medicaid. The issue is whether the petitioner meets the disability criteria for Medicaid.

FINDINGS OF FACT

1. The petitioner is a forty-one-year-old married woman with no dependants. She has a college degree and worked for many years mostly in the field of social services. Her most recent job was an occupational coordinator for an agency that serves disabled individuals. She last worked in December 2006.

2. The petitioner suffers from epilepsy that has worsened in the past few years. She has had several hospitalizations. Following a hospitalization in October 2008 a specialist noted that she had seizures every one to two months and "auras on most days" of varying severity. The

report noted that "the situation remains problematic", and that: "Seizure control has never been complete. She is still having occasional complex seizures and frequent auras. I think there is not much more we can do in terms of medical management."

3. In responses to a questionnaire dated January 5, 2009 the petitioner's treating physician listed her medical problems as follows: "Seizure disorder, hypothyroid, inflammatory arthritis, depression, migraines, neuropathy". He described her symptoms as: "seizures, numbness in arms, headache, sadness, fatigue, sleeplessness, pain in feet, lack of interest".

4. The above report also listed the petitioner's medications and noted: "Main side effects are sleeplessness, fatigue, nausea, acid reflux".

5. The report also noted that the petitioner's impairments had lasted at least twelve months and that she was not a "malingerer". The report also noted the petitioner's "depression", and that her "seizure disorder has been very hard to treat", with "many side effects with medications.

6. The above assessments are entirely consistent with the other medical evidence in the record, which consists

mostly of hospital and treatment records from various medical providers. Nothing in the medical treatment record in any way contradicts the above observations and opinions of the petitioner's treating physician.

7. In a report dated December 12, 2008, and in a follow-up dated February 13, 2009, the petitioner's treating psychiatrist responded that the petitioner's ongoing depression limited her to "on the average of 1 to 1.5 (and it wouldn't always be the same day of the week)" days per week where she could be expected to work "without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods". Again, this opinion is uncontroverted by and consistent with the other medical evidence in the record.

8. The record also includes responses to a questionnaire submitted by the petitioner's most recent employer (see *supra*), dated July 18, 2008. His responses conclude with and are summarized by the following comment:

Before (petitioner) began having seizures, she was a doing a great job in her position. Afterward, her ability to complete her job duties, interact with clients and staff deteriorated greatly.

9. In its decision finding that the petitioner is not disabled, the Department concedes that the petitioner cannot

do her former work. But it does not specify what other work would be available to the petitioner in light of her impairments as described above.

ORDER

The Department's decision is reversed.

REASONS

The Medicaid regulations set out eligibility criteria at WAM § M200 *et seq.* To qualify, individuals need to show that they are older than sixty-five years, blind, or disabled. To be considered disabled, the individual must be found disabled by the Department's Disability Determination Unit or must receive Social Security disability benefits. § M211.

The issue in this case is whether petitioner meets the definition of disability. § M211.2 defines disability as follows:

Individuals age 18 or older are considered disabled if they are unable to engage in any substantial gainful activity because of any medically determinable physical or mental impairment, or combination of impairments, that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not fewer than 12 months. To meet this definition, individuals must have a severe impairment, which makes them unable to do previous work or any other substantial activity which exists in the national economy. To determine whether individuals are able to do any other work, the disability determination unit considers their

residual functional capacity, age, education, and work experience.

Further, the regulations require making disability determinations consistent with the criteria of the Social Security Administration. § M211.4.

The Board has consistently held (see e.g., Fair Hearing No. 20,572) that this entails using Social Security's five-step sequential evaluation process, which specifies:

1. Is the applicant working and performing substantial gainful activity?
2. If not, does the applicant have a severe impairment or combination of impairments?
3. If so, does the applicant's impairment(s) meet or equal a listed impairment?
4. If so, the claimant is disabled. If not, does the impairment(s) prevent him or her from performing past relevant work based on his or her residual functional capacity?
5. If not, then there is no disability. If yes, is the claimant prevented from doing other work based on his or her medical condition taking into account the claimant's residual functional capacity, age, education and work experience?

As noted above, the petitioner last worked in 2006 at a job that was in line with her training and experience and that does not appear to have been physically or emotionally demanding. The Department concedes she can no longer perform this work (Step 4). The question (Step 5) is whether the

petitioner has the residual functional capacity to engage in any other work in light of her medical condition and limitations as described by her treating physicians. The Department bears the burden of proof at this stage. See e.g., Fair Hearing No. 20,572.

The Department's decision that the petitioner can perform other work appears cursory, in that it clearly ignores or unreasonably rejects the overwhelming weight of and the uncontroverted opinions contained in the medical evidence, *supra*. Thus, the Department's decision must be reversed. 3 V.S.A. § 3091(d), Human Services Board Rule 1000.4(D).

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